

ESTTA Tracking number: **ESTTA452883**

Filing date: **01/24/2012**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92052927
Party	Plaintiff Mr. Joseph E. Newgarden III
Correspondence Address	THOMAS J. MOTZNY KING & BALLOW 315 UNION STREET, SUITE 1100 NASHVILLE, TN 37201 UNITED STATES dlb@dlbentleylawgp.com
Submission	Other Motions/Papers
Filer's Name	Thomas J. Motzny
Filer's e-mail	trademark@kingballow.com
Signature	/Thomas J. Motzny/
Date	01/24/2012
Attachments	Exhibit F-I.pdf (34 pages)(1466330 bytes)

Exhibit F

Newgarden v. Anderson
Cancellation No. 92052927

EXHIBIT 1



The Brand Tomorrow Allowance Seeks Partners For the 'Read Me a Story' Network of Readers

The Brand Tomorrow is meant to be shared with and by people globally to realize their ideas and share each others successes.

Bismarck, ND (PRWEB) February 20, 2007 -- Kent G. Anderson, founder of www.futurevisionaries.com; is promoting "Read Me A Story," a global network of readers online from people who want to tell stories.

The idea of creating a global network of readers that people can access anywhere in the world would be an avenue for creating job opportunities for the older generation. Profits would come from stories and books published. For charity, proceeds from celebrities' readings could be obtained.

"With the video access online and on phones, there exists an excellent avenue for an individual's original creative writings to be known," Anderson said.

"Read Me a Story" US Trademark No 2636200 has been protected and an application for pending rights for a method patent has been made.

Partners and funding are needed to get this started and to help people publish their stories. Contact Kent Anderson at: 701-223-0639.

Future Brands has many pending rights. The brand's goal is to share the brand with people globally to give them the opportunity to realize their ideas in products and services.

www.futurevisionaries.com

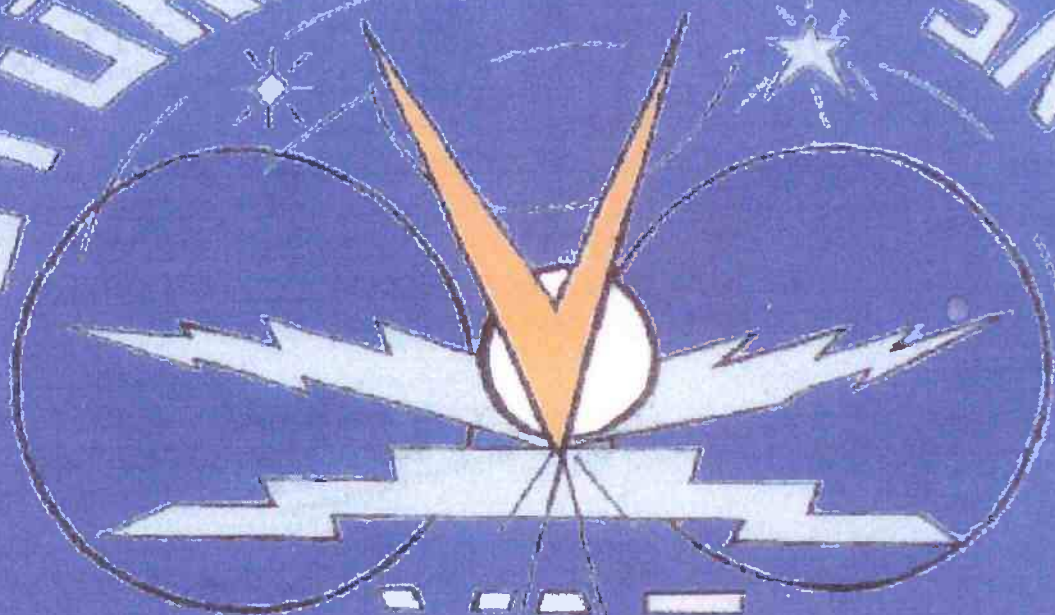
###

**Contact Information****Kent Anderson**www.futurevisionaries.com<http://www.futurevisionaries.com>

701-223-0639

Online Web 2.0 VersionYou can read the online version of this press release [here](#).

FUTURE TIME SAVING



VAL

FOR PRODUCTS
TOMORROW'S CONSUMER



Futurevisionaries.co



Who We Are

I am Kent Anderson, founder and president of FutureSM Enterprises. I am dedicated to our future. I see a more highly advanced world. I am very creative, hold many patents, enjoy inventing, and am a prolific thinker. Leadership value qualities, integrity and my love and fascination is with ideas in inventing, and thinking of a futuristic world.

I find fascination with our past and the future, and how inventors, entrepreneurs changed the world. I care for our world and all people in all countries. I wonder about what future generations will say about us, and ask what they have done for us. What will our answer be? Goals is what we can do now for our world to benefit our world and to build new crossroads to our future to challenge the boundaries that hold us back, and to bring down the barriers that separate us as a people. To work in unity. There needs to be forth entity a place that people can market, test their ideas in any marketing sector focused towards our future. I am in the process of building this corporation, and have spent many years on it. Hopes are to find the leaders; people who have the same interest and goals I have. In the end, we will be able to offer what no other company in the world canSM. This will be accomplished by focusing on the new, not the old^{TM SM}.

This will be a large undertaking, and will provide a huge marketing arena, with many opportunities available. To test and to market, invest in properties to launch new industries, new products, and new services under the name FutureSM. Future related products in any marketing sector and focus on not the old, but the new corporation. Could include on Future IslandSM, Research centers, retail, health, communications, etc.



One such endeavor would be Future IslandSM. This unique concept, which has already been initially designed and thought through, would be a very innovative idea, and would allow businesses and industries to come together in one place. By hosting these future facilities in one place, ideas would be able to come together and flourish. Basically, the main goal would be to build a NEW WORLD.SM

Qualifications for applicants would include integrity, knowledge, leadership abilities, positive attitude, and training in many different fields of today's industries, so that we may build the new industries for tomorrow. If you would like to be a part of a world leader into the FutureSM, and to work with some of the best minds and visionaries that will someday build new markets and invest in their abilities and dreams. This will represent a new way of thinking to be a future leader, and to uphold the best standards to represent the Future. It will reflect to the rest of the world a way to accomplish great benefits for our generation and future generations. You want to be remembered for what you have done and who you are. It is not how much money or power we have, but rather the ability to recognize someone's dream, and to help them accomplish it,SM and to test their ideas in any marketing sector^{SM PAT PEND}.

Goals

- To build something no one has done beforeSM
- A place to project into the futureSM
- To build new industries, new products, new markets, etc.SM
- Building a new world brandSM name futureSM
- A place to test your ideas in any marketing sector focused towards our futureSM
- To invest in the people and their ideas and their dreams for our future and the benefit of our worldSM

Features

- FutureSM Research Centers
- FutureSM Retail Stores/Shopping Malls
- FutureSM Radio, TV, Broadcasting
- FutureSM Online Services
- FutureSM Restaurant Services
- FutureSM Publication Services
- FutureSM Financial Services/Banks
- FutureSM Health Care Services
- FutureSM Sports Related Services
- FutureSM Transportation Services
- FutureSM Entertainment Services
- FutureSM Industry Services
- FutureSM Hotels, Motels, Resorts, Casinos
- FutureSM Educational Services
- FutureSM Amusement Park Services
- FutureSM Goods and Products
- And Much More

Below are several examples of patents I have secured, including the Time-SaverSM Self-Cleaning Carpet, Rent & Rescue ToysSM, and The Dust BuddiesSM



If you are interested and feel you have what it takes, please email me and tell me who you are. Talk about your background, and what status you hold in society. What makes you unique or special in this world? What is your track record? Are you interested in investing? I would love to hear from you. Below is my contact information.

Kent Anderson
Visionary Inventor with Track Record
Founder/President

FutureSM Enterprises

NetworkSolutions

13200 Woodland Park Road
Herndon, VA 20171
Tel: (703) 668-4600
Fax: (703) 668-7958

Dear Kent Anderson,

Thank you for contacting Network Solutions Customer Service Department. Your request for a list of domain names under your account# 1412873 has been received by the VIP Department.

We are committed to creating the best Customer experience possible. One of the first ways we can demonstrate our commitment to this goal is to respond to your recent request quickly and efficiently.

On the attached sheets, you will find a list of the domain names under account# 1412873, as well as the corresponding dates and registrant names.

We hope this information has been helpful. However, if you have any additional questions, please don't hesitate to contact our VIP Team Customer Care Departments.

As a Network Solutions VIP Member, you are entitled to contact your dedicated team of VIP Customer Care Departments any time, day or night for any level of support you may need. To reach us, call 1-866-234-4131 (within the U.S. and Canada) or 1-570-708-8600 (worldwide) or e-mail us at vip@networksolutions.com.

We always appreciate your business and are happy to have you as a VIP member.

Sincerely,

David M.
VIP Customer Care Specialist
Network Solutions
vip@networksolutions.com
1-866-234-4131 (U.S.)
1-570-708-8600 (International)

This material is intended only for the individual or entity to which it is addressed. It may contain privileged or confidential information which is exempt from disclosure under applicable laws. If you are not the intended recipient, please note that you are strictly prohibited from disseminating or distributing this material (other than to the intended recipient) or copying this material. If you have received this communication in error, please notify me immediately by telephone.

WWW.NETWORKSOLUTIONS.COM

futurenations.com	3/18/2010	KENT ANDERSON
futurevets.com	3/18/2010	KENT ANDERSON
airbabies.net	3/19/2010	KENT ANDERSON
airportlostgoods.com	3/19/2010	KENT ANDERSON
countriesworkingtogether.com	3/19/2010	KENT ANDERSON
futurehowdoyoufeel.com	3/19/2010	KENT ANDERSON
futureisbuiltonideas.com	3/19/2010	KENT ANDERSON
futureacquisitions.com	3/20/2010	KENT ANDERSON
futureplanets.com	3/20/2010	KENT ANDERSON
futurepretty.com	3/20/2010	KENT ANDERSON
ideasthatwillhelpttheworld.com	3/20/2010	KENT ANDERSON
orbbies.com	3/20/2010	KENT ANDERSON
peoplesconcepts.com	3/20/2010	KENT ANDERSON
tomorrowdreamers.com	3/20/2010	KENT ANDERSON
tomorrowfriendships.com	3/20/2010	KENT ANDERSON
womanideas.com	3/20/2010	KENT ANDERSON
chinasuperfuture.com	3/21/2010	KENT ANDERSON
denmarkfuture.com	3/21/2010	KENT ANDERSON
egyptfuture.com	3/21/2010	KENT ANDERSON
futureapprentice.com	3/21/2010	KENT ANDERSON
futuredoers.com	3/21/2010	KENT ANDERSON
futureentity.com	3/21/2010	KENT ANDERSON
futurefounder.com	3/21/2010	KENT ANDERSON
futureglobalbrands.com	3/21/2010	KENT ANDERSON
futureimagine.com	3/21/2010	KENT ANDERSON
futureodd.com	3/21/2010	KENT ANDERSON
futurevortex.com	3/21/2010	KENT ANDERSON
futurewonderful.com	3/21/2010	KENT ANDERSON
italyfuture.com	3/21/2010	KENT ANDERSON
newzealandfuture.com	3/21/2010	KENT ANDERSON
parisfuture.com	3/21/2010	KENT ANDERSON
romefuture.com	3/21/2010	KENT ANDERSON
russiafuture.com	3/21/2010	KENT ANDERSON
saudiaraabiafuture.com	3/21/2010	KENT ANDERSON
singaporefuture.com	3/21/2010	KENT ANDERSON
spainfuture.com	3/21/2010	KENT ANDERSON
tomorrowmarketplace.com	3/21/2010	KENT ANDERSON
tomorrownewyork.com	3/21/2010	KENT ANDERSON
tomorrowtrademark.com	3/21/2010	KENT ANDERSON
unitedarabemiratesfuture.com	3/21/2010	KENT ANDERSON
unitedkingdomfuture.com	3/21/2010	KENT ANDERSON
unitedstatesfuture.com	3/21/2010	KENT ANDERSON
carrabeanfuture.com	3/22/2010	KENT ANDERSON
futuregreece.com	3/22/2010	KENT ANDERSON
futuregreenland.com	3/22/2010	KENT ANDERSON
futurekuwait.com	3/22/2010	KENT ANDERSON
futuremexico.com	3/22/2010	KENT ANDERSON
futurepharaohs.com	3/22/2010	KENT ANDERSON
futuresweden.com	3/22/2010	KENT ANDERSON
futuristicfuture.com	3/22/2010	KENT ANDERSON

FROM :future

FAX NO. :7012230639

Feb. 14 2011 09:50AM P18

vac products for tomorrows consumer

millennium tec-future time saver

925 n griffin
bismarck nd 58501

Ken padgett
shaw industries
tec surfaces
po drawer 2128
dalton georgia 30722

thank you for your interest back in 1996 also for taking your time on april 26 1999 vising with me again vac -cleaning system that can be incorported inside carpting turn your carpeting into a self cling system now it is patterned here is the info you request

also i have also incuded a synopises of what my objectiions are for this revelutionary new product caleed time saver tm if you have any councerns or questions please dont heasetate

to call me i look forwarded to vising with you also i am exited about the other products can be made form the tmtime saver

not to limit the scoop of the invnetion i look forwed to working with you and your assaosiates in making this into 1 of the best selling products thank you

Exhibit G

Newgarden v. Anderson
Cancellation No. 92052927

EXHIBIT 2

In Re Registration No. 3731690
Registered on December 29, 2009

IN THE UNITED STATES PATENT AND TRADEMARK
OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

THE TOMORROW PROJECT, LLC.)	Cancellation No.: Not Yet Assigned
Petitioner,)	
v.)	
KENT G. ANDERSON.)	
Respondent.)	

PETITION FOR PARTIAL CANCELLATION

The Tomorrow Project, LLC. ("Petitioner"), a limited liability company organized under the laws of Nevada, with an address of P.O. Box 10059, Zephyr Cove, Nevada 89448, believes that it will be damaged by the continued presence on the Register of Registration No. 3731690 for the mark TOMORROW in class 35 (the "Cited Registration") for the services described in the registration as "arranging and conducting business conferences" (the "Target Services"). Petitioner hereby petitions to partially cancel the Cited Registration only with respect to the Target Services.

Petitioner's grounds for this Petition are as follows:

1. Petitioner applied to register the mark THE TOMORROW PROJECT for use on and in connection with "arranging and conducting business conferences" (Serial No. 77/954724) in the United States Patent and Trademark Office on March 9, 2010. The trademark Examining Attorney reviewing the application refused registration on the ground that there is an alleged likelihood of confusion with the mark in the Cited Registration.
2. Upon information and belief, Respondent Kent G. Anderson is the record owner of the Cited Registration. To the best of Petitioner's information, Kent G. Anderson's last known address is 925 N. Griffin, Bismark, North Dakota, 58501, USA.

3. Upon information and belief, Respondent Kent G. Anderson discontinued use of the alleged mark TOMORROW for the Target Services in the Cited Registration with an intent not to resume use and thereby has abandoned the mark for the Target Services within the meaning of Section 45 of the United States Trademark Act of 1946, 15 U.S.C. § 1127.

4. Given that the alleged mark TOMORROW has been abandoned by Respondent Kent G. Anderson for the Target Services, the Cited Registration is subject to partial cancellation under Section 14 of the United States Trademark Act of 1946, as amended, U.S.C. § 1064.

5. By virtue of the foregoing, Petitioner is now and will be damaged by the continued presence on the Register of Registration No. 3731690 for the mark TOMORROW in class 35 for "arranging and conducting business conferences".

WHEREFORE, the Petitioner prays that Registration No. 3731690 be partially cancelled with respect to the class 35 services described therein as "arranging and conducting business conferences" and that this Petition for Partial Cancellation be sustained in favor of the Petitioner.

Please recognize as attorneys for Petitioner Allyn Taylor, Esq., member of the Bars of Washington, D.C. and the State of California, and the law firm of DLA Piper LLP (US), 2000 University Avenue, East Palo Alto, California 94303-2248. All communications regarding this petition should be addressed to Allyn Taylor, Esq. at the foregoing address.

Please charge the filing fees of this Petition to Cancel to Deposit Acct. No. 07-1907.

Please charge any additional fees, or credit any overpayment, to Deposit Acct. No. 07-1907.

Dated: December 16, 2010

DLA PIPER LLP (US)

By: Paul A. McLean
Paul A. McLean

Allyn Taylor
DLA PIPER LLP (US)
2000 University Avenue
East Palo Alto, CA 94303-2248
Telephone: (650) 833-2170

Attorneys for Petitioner
The Tomorrow Project, LLC.

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the foregoing PETITION FOR PARTIAL CANCELLATION is being served by First Class mail, postage prepaid, this 16h day of December, 2010, on Respondent at:

✓ Kent G. Anderson
FUTURE
FUTURE VISIONARIES
925 N. Griffin
Bismarck, ND 58501

Executed this 16th day of December, 2010,
at East Palo Alto, California.

Allison V. Burn
Allison V. Burn

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

The Tomorrow Project, LLC

Opposer,

vs.

Kent G. Anderson

Applicant.

Opposition No. 92053413

Mark: TOMORROW

Registration No.:3731690

Commissioner for Trademark
Trademark Trial and Appeal Board
PO Box 1451
Alexandria, VA 22313-1451

Applicant's Answer to Petition for Partial Cancellation

Change of Correspondence Address

Dwayne L. Bentley, Esq.
DL BENTLEY LAW GROUP PLLC
16 Court Street, Suite 2007
Brooklyn, NY 11241

In Answer to the Petition for Partial Cancellation in the above-captioned case, the Applicant states the following:

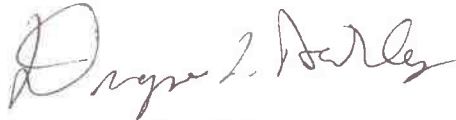
1. Applicant is without information sufficient to form a belief as to the truth of the allegations in Paragraph 1 and therefore denies.
2. Admits.
3. Applicant is without information sufficient to form a belief as to the truth of the allegations in Paragraph 3 and therefore denies.
4. Applicant is without information sufficient to form a belief as to the truth of the allegations in Paragraph 4 and therefore denies.

5. Applicant is without information sufficient to form a belief as to the truth of the allegations in Paragraph 5 and therefore denies.

WHEREFORE, Applicant respectfully requests that this Notice of Opposition be dismissed.

Dated: January 24, 2011

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Dwayne L. Bentley". The signature is fluid and cursive, with the first name "Dwayne" being more prominent than the last name "Bentley".

Dwayne L. Bentley
DL BENTLEY LAW GROUP PLLC
Attorney for Applicant, Kent Anderson
16 Court Street, Suite 2007
Brooklyn, NY 11241
Phone: (718)797-5350
Fax: (718)852-3309

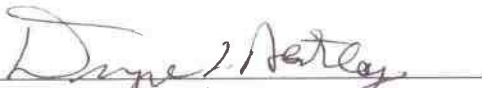
CERTIFICATE OF TRANSMITTAL

I hereby certify that a true copy of the foregoing ANSWER TO PETITION FOR PARTIAL CANCELLATION OPPOSITION is being filed electronically with the TTAB via ESTTA on this day, January 24, 2011.


Dwayne L. Bentley

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing ANSWER TO PETITION FOR PARTIAL CANCELLATION was served on the Petitioner this 24th day of January, 2011 by sending same via First Class Mail postage prepaid to:


Dwayne L. Bentley

Allyn Taylor
DLA PIPER LLP (US)
2000 University Avenue
East Palo Alto, CA 94303-2248

Exhibit H

Newgarden v. Anderson
Cancellation No. 92052927

To: Newgarden, Joseph E., III (mstamelos@kingballow.com)

Subject: U.S. TRADEMARK APPLICATION NO. 77310161 - RACER OF TOMORROW - N/A

Sent: 3/5/2010 9:28:16 AM

Sent As: ECOM114@USPTO.GOV

Attachments: [Attachment - 1](#)
[Attachment - 2](#)
[Attachment - 3](#)
[Attachment - 4](#)
[Attachment - 5](#)
[Attachment - 6](#)
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[Attachment - 56](#)
[Attachment - 57](#)

UNITED STATES PATENT AND TRADEMARK OFFICE

SERIAL NO: 77/310161

MARK: RACER OF TOMORROW

CORRESPONDENT ADDRESS:

MARK STAMELOS
KING & BALLOW
315 UNION ST STE 1100
NASHVILLE, TN 37201-1437

77310161

RESPOND TO THIS ACTION:

<http://www.uspto.gov/teas/eTEASpageD.htm>

GENERAL TRADEMARK INFORMATION:

<http://www.uspto.gov/main/trademarks.htm>

APPLICANT: Newgarden, Joseph E., III

CORRESPONDENT'S REFERENCE/DOCKET

NO:

N/A

CORRESPONDENT E-MAIL ADDRESS:

mstamelos@kingballow.com

OFFICE ACTION

TO AVOID ABANDONMENT, THE OFFICE MUST RECEIVE A PROPER RESPONSE TO THIS OFFICE ACTION WITHIN 6 MONTHS OF THE ISSUE/MAILING DATE.

ISSUE/MAILING DATE: 3/5/2010

On September 2, 2008, action on this application was suspended pending the disposition of Application Serial No. 76/497832. The referenced prior-pending application has since registered. Therefore, registration is refused as follows.

SECTION 2(d) REFUSAL – LIKELIHOOD OF CONFUSION

Registration of the applied-for mark is refused because of a likelihood of confusion with the mark in U.S. Registration No. 3731690. Trademark Act Section 2(d), 15 U.S.C. §1052(d); *see* TMEP §§1207.01 *et seq.* See the enclosed registration.

Trademark Act Section 2(d) bars registration of an applied-for mark that so resembles a registered mark that it is likely that a potential consumer would be confused or mistaken or deceived as to the source of the goods and/or services of the applicant and registrant. *See* 15 U.S.C. §1052(d). The court in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (C.C.P.A. 1973) listed the principal factors to be considered when determining whether there is a likelihood of confusion under Section 2(d). *See* TMEP §1207.01. However, not all of the factors are necessarily relevant or of equal weight, and any one factor may be dominant in a given case, depending upon the evidence of record. *In re Majestic Distilling Co.*, 315 F.3d 1311, 1315, 65 USPQ2d 1201, 1204 (Fed. Cir. 2003); *see In re E. I. du Pont*, 476 F.2d at 1361-62, 177 USPQ at 567.

In this case, the following factors are the most relevant: similarity of the marks, similarity of the goods and/or services, and similarity of trade channels of the goods and/or services. *See In re Opus One, Inc.*, 60 USPQ2d 1812 (TTAB 2001); *In re Dakin's Miniatures Inc.*, 59 USPQ2d 1593 (TTAB 1999); *In re Azteca Rest. Enters., Inc.*, 50 USPQ2d 1209 (TTAB 1999); TMEP §§1207.01 *et seq.*

In a likelihood of confusion determination, the marks are compared for similarities in their appearance, sound, meaning or connotation and commercial impression. *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 1361, 177 USPQ 563, 567 (C.C.P.A. 1973); TMEP §1207.01(b). Similarity in any one of these elements may be sufficient to find a likelihood of confusion. *In re White Swan Ltd.*, 8 USPQ2d 1534, 1535 (TTAB 1988); *In re Lamson Oil Co.*, 6 USPQ2d 1041, 1043 (TTAB 1987); *see* TMEP §1207.01(b).

The overriding concern is not only to prevent buyer confusion as to the source of the goods and/or services, but to protect the registrant from adverse commercial impact due to use of a similar mark by a newcomer. *See In re Shell Oil Co.*, 992 F.2d 1204, 1208, 26 USPQ2d 1687, 1690 (Fed. Cir. 1993). Therefore, any doubt regarding a likelihood of confusion determination is resolved in favor of the

registrant. TMEP §1207.01(d)(i); *see Hewlett-Packard Co. v. Packard Press, Inc.*, 281 F.3d 1261, 1265, 62 USPQ2d 1001, 1003 (Fed. Cir. 2002); *In re Hyper Shoppes (Ohio), Inc.*, 837 F.2d 463, 464-65, 6 USPQ2d 1025, 1025 (Fed. Cir. 1988).

The applicant has applied to register the mark RACER OF TOMORROW for “promotional materials, namely, T-shirts, baseball caps, caps with visors, children's headwear, coats, coveralls, denim jackets, fleece pullovers, halter tops, hats, head bands, head sweatbands, headwear, jeans, open-necked shirts, shirts, overalls, pajamas, polo shirts, pullovers, rainwear, shirts, sport shirts, sun visors, sweat shirts, swim suits, tank tops, visors, and wind resistant jackets, gloves” and “entertainment services in the nature of participating in professional automobile races; Entertainment services, namely, personal appearances by a professional automobile racer.”

The registered mark is TOMORROW for various services including clothing stores and entertainment in the nature of automobile races.

The marks are highly similar in this case. First, the word portions are generally the dominant and most significant features of marks because consumers will call for the goods and/or services in the marketplace by that portion. *In re Appetito Provisions Co.*, 3 USPQ2d 1553, 1554 (TTAB 1987); *In re Drug Research Reports, Inc.*, 200 USPQ 554, 556 (TTAB 1978).

When a mark consists of a word portion and a design portion, the word portion is more likely to be impressed upon a purchaser's memory and to be used in calling for the goods and/or services. Therefore, the word portion is normally accorded greater weight in determining likelihood of confusion. *In re Dakin's Miniatures, Inc.*, 59 USPQ2d 1593, 1596 (TTAB 1999); *In re Appetito Provisions Co.*, 3 USPQ2d 1553, 1554 (TTAB 1987); *Amoco Oil Co. v. Amerco, Inc.*, 192 USPQ 729, 735 (TTAB 1976); TMEP §1207.01(c)(ii).

The word portions of the marks are nearly identical in appearance, sound and meaning. The addition of the design element does not obviate the similarity of the marks in this case. *See In re Shell Oil Co.*, 992 F.2d 1204, 1206, 26 USPQ2d 1687, 1688 (Fed. Cir. 1993); TMEP §1207.01(c)(ii).

In addition, although a disclaimed portion of a mark certainly cannot be ignored, and the marks must be compared in their entireties, one feature of a mark may be more significant in creating a commercial impression. Disclaimed matter is typically less significant or less dominant when comparing marks. *See In re Dixie Rests. Inc.*, 105 F.3d 1405, 1407, 41 USPQ2d 1531, 1533-34 (Fed. Cir. 1997); *In re Nat'l Data Corp.*, 753 F.2d 1056, 1060, 224 USPQ 749, 752 (Fed. Cir. 1985); TMEP §1207.01(b)(viii), (c)(ii). The applicant is required to disclaim RACER.

Marks may be confusingly similar in appearance where there are similar terms or phrases or similar parts of terms or phrases appearing in both applicant's and registrant's mark. *See Crocker Nat'l Bank v. Canadian Imperial Bank of Commerce*, 228 USPQ 689 (TTAB 1986), *aff'd sub nom. Canadian Imperial Bank of Commerce v. Wells Fargo Bank, Nat'l Ass'n*, 811 F.2d 1490, 1 USPQ2d 1813 (Fed. Cir. 1987) (COMMCASH and COMMUNICASH); *In re Phillips-Van Heusen Corp.*, 228 USPQ 949 (TTAB 1986) (21 CLUB and “21” CLUB (stylized)); *In re Corning Glass Works*, 229 USPQ 65 (TTAB 1985) (CONFIRM and CONFIRMCELLS); *In re Collegian Sportswear Inc.*, 224 USPQ 174 (TTAB 1984) (COLLEGIAN OF CALIFORNIA and COLLEGIENNE); *In re Pellerin Milnor Corp.*, 221 USPQ 558 (TTAB 1983) (MILTRON and MILLTRONICS); *In re BASF A.G.*, 189 USPQ 424 (TTAB 1975) (LUTEXAL and LUTEX); TMEP §1207.01(b)(ii)-(iii). The marks contain TOMORROW.

The question is not whether people will confuse the marks, but whether the marks will confuse people into

believing that the goods they identify come from the same source. *In re West Point-Pepperell, Inc.*, 468 F.2d 200, 201, 175 USPQ 558, 558-59 (C.C.P.A. 1972); TMEP §1207.01(b). For that reason, the test of likelihood of confusion is not whether the marks can be distinguished when subjected to a side-by-side comparison. The question is whether the marks create the same overall impression. *See Recot, Inc. v. M.C. Becton*, 214 F.2d 1322, 1329-30, 54 USPQ2d 1894, 1899 (Fed. Cir. 2000); *Visual Info. Inst., Inc. v. Vicon Indus. Inc.*, 209 USPQ 179, 189 (TTAB 1980). The focus is on the recollection of the average purchaser who normally retains a general rather than specific impression of trademarks. *Chemetron Corp. v. Morris Coupling & Clamp Co.*, 203 USPQ 537, 540-41 (TTAB 1979); *Sealed Air Corp. v. Scott Paper Co.*, 190 USPQ 106, 108 (TTAB 1975); TMEP §1207.01(b). Consumers are likely to be confused as to the source of the goods when they encounter the goods bearing the marks because they are likely to believe that the goods/services derive from a single TOMORROW source. Consumers are likely to believe that the auto racer and racing promotional products are from the TOMORROW source of racing and promotional services. The marks are highly similar.

The goods and/or services of the parties need not be identical or directly competitive to find a likelihood of confusion. *See Safety-Kleen Corp. v. Dresser Indus., Inc.*, 518 F.2d 1399, 1404, 186 USPQ 476, 480 (C.C.P.A. 1975); TMEP §1207.01(a)(i). Rather, they need only be related in some manner, or the conditions surrounding their marketing are such that they would be encountered by the same purchasers under circumstances that would give rise to the mistaken belief that the goods and/or services come from a common source. *In re Total Quality Group, Inc.*, 51 USPQ2d 1474, 1476 (TTAB 1999); TMEP §1207.01(a)(i); *see, e.g., On-line Careline Inc. v. Am. Online Inc.*, 229 F.3d 1080, 1086-87, 56 USPQ2d 1471, 1475-76 (Fed. Cir. 2000); *In re Martin's Famous Pastry Shoppe, Inc.*, 748 F.2d 1565, 1566-68, 223 USPQ 1289, 1290 (Fed. Cir. 1984).

The goods/services are highly related in this case. Consumers are likely to be confused by the use of similar marks on or in connection with goods and with services featuring or related to those goods. TMEP §1207.01(a)(ii); *see In re Hyper Shoppes (Ohio), Inc.*, 837 F.2d 463, 6 USPQ2d 1025 (Fed. Cir. 1988) (holding BIGG'S for retail grocery and general merchandise store services likely to be confused with BIGGS for furniture); *In re United Serv. Distribs., Inc.*, 229 USPQ 237 (TTAB 1986) (holding design for distributorship services in the field of health and beauty aids likely to be confused with design for skin cream); *In re Phillips-Van Heusen Corp.*, 228 USPQ 949 (TTAB 1986) (holding 21 CLUB for various items of men's, boys', girls' and women's clothing likely to be confused with THE "21" CLUB (stylized) for restaurant services and towels); *In re U.S. Shoe Corp.*, 229 USPQ 707 (TTAB 1985) (holding CAREER IMAGE (stylized) for retail women's clothing store services and clothing likely to be confused with CREST CAREER IMAGES (stylized) for uniforms); *Steelcase Inc. v. Steelcare Inc.*, 219 USPQ 433 (TTAB 1983) (holding STEELCARE INC. for refinishing of furniture, office furniture, and machinery likely to be confused with STEELCASE for office furniture and accessories); *Mack Trucks, Inc. v. Huskie Freightways, Inc.*, 177 USPQ 32 (TTAB 1972) (holding similar marks for trucking services and on motor trucks and buses likely to cause confusion). The registrant's clothing stores may feature the applicant's clothing.

In addition, the parties provide entertainment in the nature of automobile races and participating in such races. If the goods and/or services of the respective parties are "similar in kind and/or closely related," the degree of similarity between the marks required to support a finding of likelihood of confusion is not as great as would be required with diverse goods and/or services. *In re J.M. Originals Inc.*, 6 USPQ2d 1393, 1394 (TTAB 1987); *see Shen Mfg. Co. v. Ritz Hotel Ltd.*, 393 F.3d 1238, 1242, 73 USPQ2d 1350, 1354 (Fed. Cir. 2004); TMEP §1207.01(b).

Please note the fact that the goods or services of the parties differ is not controlling in determining

likelihood of confusion. The issue is not likelihood of confusion between particular goods or services, but likelihood of confusion as to the source of those goods or services. *In re Shell Oil Co.*, 992 F.2d 1204, 1208, 26 USPQ2d 1687, 1690 (Fed. Cir. 1993); *Safety-Kleen Corp. v. Dresser Indus., Inc.*, 518 F.2d 1399, 1404, 186 USPQ 476, 480 (C.C.P.A. 1975); TMEP §1207.01.

Any goods or services in the registrant's normal fields of expansion should also be considered when determining whether the registrant's goods and/or services are related to the applicant's goods and/or services. TMEP §1207.01(a)(v); see *In re 1st USA Realty Prof'ls, Inc.*, 84 USPQ2d 1581 1584 (TTAB 2007). Evidence that third parties offer the goods and/or services of both the registrant and applicant suggest that it is likely that the registrant would expand their business to include applicant's goods and/or services. In that event, customers are likely to believe the goods and/or services at issue come from or, are in some way connected with, the same source. *In re 1st USA Realty Prof'ls*, 84 USPQ2d at 1584 n.4; see TMEP §1207.01(a)(v). Sporting events such as automobile races also provide promotional items such as clothing and other products.

Attached are copies of printouts from the USPTO X-Search database, which show third-party registrations of marks used in connection with the same or similar goods and/or services as those of applicant and registrant in this case. These printouts have probative value to the extent that they serve to suggest that the goods and/or services listed therein, are of a kind that may emanate from a single source. *In re Infinity Broad. Corp.*, 60 USPQ2d 1214, 1217-18 (TTAB 2001); *In re Albert Trostel & Sons Co.*, 29 USPQ2d 1783, 1785-86 (TTAB 1993); *In re Mucky Duck Mustard Co.*, 6 USPQ2d 1467, 1470 n.6 (TTAB 1988); TMEP §1207.01(d)(iii).

The goods/services travel in the same channels of trade. Or, the conditions surrounding their marketing may be such, that they could be encountered by the same purchasers under circumstances that could give rise to the mistaken belief that the goods/services come from a common source.

The similarities among the marks and the goods/services of the parties are so great as to create a likelihood of confusion.

INFORMALITIES

Although applicant's mark has been refused registration, applicant may respond to the refusal(s) by submitting evidence and arguments in support of registration.

The applicant must respond to the requirement(s) set forth below.

DISCLAIMER REQUIRED

Applicant must insert a disclaimer of "RACER" in the application because it merely describes the goods and services. See 15 U.S.C. §1056(a); TMEP §§1213, 1213.03(a). The clothing items may be for racers and the automobile race services features racers. Please see the attached definition.

The following is the accepted standard format for a disclaimer:

No claim is made to the exclusive right to use "RACER" apart from the mark as shown.

TMEP §1213.08(a)(i).

/Alex Seong Keam/
Attorney
Law Office 114
Phone: 571-272-9176
Fax for Responses: 571-273-9114

RESPOND TO THIS ACTION: Applicant should file a response to this Office action online using the form at <http://www.uspto.gov/teas/eTEASpageD.htm>, waiting 48-72 hours if applicant received notification of the Office action via e-mail. For *technical* assistance with the form, please e-mail TEAS@uspto.gov. For questions about the Office action itself, please contact the assigned examining attorney. **Do not respond to this Office action by e-mail; the USPTO does not accept e-mailed responses.**

If responding by paper mail, please include the following information: the application serial number, the mark, the filing date and the name, title/position, telephone number and e-mail address of the person signing the response. Please use the following address: Commissioner for Trademarks, P.O. Box 1451, Alexandria, VA 22313-1451.

STATUS CHECK: Check the status of the application at least once every six months from the initial filing date using the USPTO Trademark Applications and Registrations Retrieval (TARR) online system at <http://tarr.uspto.gov>. When conducting an online status check, print and maintain a copy of the complete TARR screen. If the status of your application has not changed for more than six months, please contact the assigned examining attorney.

Exhibit I

Newgarden v. Anderson
Cancellation No. 92052927

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1	85492895		ANY GIVEN CHILD	TARR	LIVE
2	85492879		OPERA IN THE OUTFIELD	TARR	LIVE
3	77643079	3654321	C-TRAC	TARR	LIVE
4	77607126	3646506	CROWE ACTIVITY REVIEW SYSTEM	TARR	LIVE
5	77602438	3764577	CROWE INDUSTRY VANTAGE	TARR	LIVE
6	76594751		TOMORROW/FUTURISTIC	TARR	LIVE
7	76486806		TOMORROW	TARR	LIVE
8	76634134		FUTURE TOWER	TARR	LIVE
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25	76324919	3974745	FUTURE	TARR	LIVE
26	76554723	3957951	FUTURE/TOMORROW	TARR	LIVE

27	76689451	3629172	FUTURE VISIONARIES	TARR	LIVE
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29	76652687		FUTURE	TARR	LIVE
30	76634950		FUTURE	TARR	LIVE
31	76605689		FUTURE	TARR	LIVE
32	76598410		FUTURE MOTOR COMPANY	TARR	LIVE
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34	76546757		FUTURE	TARR	LIVE
35	76545706		FUTURISTIC	TARR	LIVE
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50	76288107	2780176	FUTURE	TARR	LIVE

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56	76247198		FUTURE	TARR	DEAD
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58	76240481		FUTURE COUNTRY FUTURE NATION FUTURE CITIES	TARR	DEAD
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95	75639779	2462397	COSMIC ROCKET	TARR	LIVE
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108	75652066	2628601	COSMIC	TARR	LIVE
109	75646500	2721658	FUTURE	TARR	LIVE
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115	75618703	2704922	FUTURE	TARR	LIVE
116	75611951	2643249	333 FUTURE TOYS	TARR	LIVE
117	75594990	2356919	FUTURE	TARR	LIVE
118	75531608	2390335	COCONUT KIDS	TARR	LIVE
119	75511307	2392040	RUMMAGE SALE KIDS GARAGE SALE! ITEMS FROM OTHER PLANETS	TARR	LIVE
120	75501998	2356622	TIME TRAVEL	TARR	LIVE
121	75498287	2485578	FUTURE TIME SAVER VAC PRODUCTS FOR TOMORROWS CONSUMER	TARR	LIVE
122	75499910	2423767	FUTUREWAVE SALONS CATCH THE WAVE OF STYLE-N-THE FUTURE-LOOK	TARR	LIVE
123	75435552	2352479	COCONUT KIDS N FRIENDS KIDS IN A NUT SHELL	TARR	LIVE
124	75428283	2356533	FUTURE WORLDS TIME TRAVELERS TIME WORLD INTERPLANETARY DINING	TARR	LIVE

125	75427854		CALLING ALL TIME TRAVELERS, TIME EXPLORERS, TIME VOYAGERS AND ALL TIME RANGERS IN THIS WORLD AND OF OTHER WORLDS. TRAVEL BEYOND TIME AND SPACE AND ENJOY OUR INTERGALATIC TIME SHIPS AND OUR INTERSTELLAR TIME FOODS. EXPERIENCE THE TIME FORCE! DINING AND TIME TRAVEL AT ITS BEST!	TARR	DEAD
126	74648785	2226411	DB MAGNIFICENT MAGICAL TRANSFORMING DUST BUDDIES AND FRIENDS, INC.	TARR	DEAD

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